

ELAINE MARIANNE McLEVIE

IBLA 82-1012

Decided September 23, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring lode mining claim abandoned and void. NMC 16278.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices are of record and in the proper office of BLM. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

APPEARANCES: Elaine Marianne McLevie, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elaine Marianne McLevie has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 7, 1982, which declared the Quartz Mountain 74 lode mining claim, NMC 16278, abandoned and void because no evidence of assessment work or notice of intention to hold the claim was filed by December 30, 1978, as required by 43 CFR 3833.2.

The claim was located on December 1, 1977, recorded with the county recorder on February 6, 1978, and recorded with BLM on February 28, 1978. The record indicates that no evidence of assessment work or notice of intention to hold was filed with BLM prior to December 31, 1978.

On appeal, appellant alleges that she understood that the necessary filing had been undertaken on her behalf by Silver International, Inc.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), provides in pertinent part:

Sec. 314 (a) \* \* \* The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

\* \* \* \* \*

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; \* \* \*.

Thus, the owner of an unpatented mining claim located in 1977 must file either a proof of labor or a notice of intent to hold the claim, both in the county recorder's office where the location notice is of record and in the proper office of BLM, prior to December 31, 1978. Where, as in this case, no proof of labor or notice of intent to hold the claim was filed with BLM in 1978, the mining claim was properly deemed abandoned and void. This Board has no authority to waive noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 396 (1981).

Appellant should confer with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Melvin J. Mirkin  
Administrative Judge  
Alternate Member

